International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, I.A.T.S.E. & M.P.M.O., Local 412 (Various Employers) ***and*** **Karl Franz von Mann.** Case 12–CB–3611

September 15, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

The question presented here is whether the judge correctly found that the Respondent violated Section 8(b)(1)(A) and (2) by permanently barring Charging Party Karl Franz von Mann from using its exclusive hiring hall system.[1] The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, I.A.T.S.E. & M.P.M.O., Local 412, Sarasota, Florida, its officers, agents, and representatives, shall take the action set forth in the Order.

[1] On March 16, 1993, Administrative Law Judge William N. Cates issued the attached decision. The Respondent and the General Counsel each filed exceptions with supporting briefs.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

David Anhorn, Esq., for the General Counsel.
Mark F. Kelly, Esq., for the Union.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This case involves the July 10, 1992[1] letter International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, I.A.T.S.E. & M.P.M.O., Local 412 (Union) Business Representative Martin Petlock (Business Representative Petlock) sent member Karl Franz von Mann (von Mann) in which von Mann was notified he was permanently barred from using the Union's exclusive referral system.

[1] All dates hereinafter are 1992 unless I indicate otherwise.

Counsel for the General Counsel (Government) contends that since October 1988, the Union has been the exclusive source of referrals of employees to employment with the Asolo Center for the Performing Arts (Asolo) and other various employers in and around Sarasota, Florida. The Government contends the Union, in violation of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act) permanently barred von Mann from using its exclusive referral system for reasons which are unfair and/or arbitrary, and other than for von Mann's failure to tender periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership in the Union.

The Union denies having violated the Act in any manner.

Trial of this case was conducted before me in Sarasota, Florida, on January 29, 1993, based on von Mann's charge[2] and the complaint and notice of hearing (complaint) issued on August 21, by the Regional Director for Region 12 of the National Labor Relations Board (the Board). The Government and Union filed briefs which have been carefully considered.

On the basis of the entire record, and my observation of the demeanor of the four witnesses who testified, I will, as hereinafter more fully explained, conclude the Union violated the Act when it permanently barred von Mann from using its exclusive referral system.

FINDINGS OF FACT

I. JURISDICTION

Asolo is a Florida nonprofit corporation with an office and place of business in Sarasota, Florida, where it is engaged in the presentation of theatrical productions. During the 12 months preceding issuance of the complaint herein, a representative period, Asolo received gross revenues in excess of $500,000 and purchased and received goods and materials valued in excess of $2000 directly from suppliers located outside the State of Florida. The complaint alleges, the parties admit, the evidence establishes, and I find that Asolo is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the parties admit, the evidence establishes, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

In a related case involving the identical parties herein, and reported at 308 NLRB 1084 (1992) (*Asolo I*), the Board affirmed the judge's findings that the Union violated Section 8(b)(1)(A) of the Act by operating an exclusive hiring hall without any objective standards,[3] written or unwritten. Union Business Representative Petlock said the Union was in the process of creating a handbook/manual and certain referral lists to be utilized in their exclusive hiring hall but that such had not, as of the trial herein, been accomplished or implemented. Petlock acknowledged the Union refers employees to various entertainment and theatrical venues in and around

[2] Von Mann's charge was filed on July 17.

[3] The Board affirmed the judge's conclusion this was a continuing violation of the Act.

Sarasota, Florida, including Asolo which is one of the largest users of its referral hall services. The Board also affirmed the judge's conclusion in *Asolo I* that the Union had, in violation of Section 8(b)(1)(A) and (B) of the Act, refused for arbitrary and invidious reasons to refer von Mann for employment in the Sarasota, Florida, area.[4]

It is undisputed that von Mann has, since January 1981, been, and continues to remain, a member in good standing of the Union. Von Mann lived outside the Sarasota, Florida area from January 1981 until November 1989. It is undisputed that von Mann has not been the subject of any internal union charges or complaints since having returned to Sarasota, Florida, in 1989.

The thrust of this case revolves around the letter Union Business Representative Petlock sent to von Mann on July 10. The letter, in its entirety, follows:

July 10, 1992

Karl Franz Von Mann
217 S Shave Ave
Sarasota FL 24237

Dear Brother Von Mann:

We have learned that on May 22, 1992, you went to the Asolo Theater and spoke with Lee Warner and Donna Gerdes, two Asolo officials. You told them that you wanted to bring to their attention financial improprieties allegedly committed by me and Victor Meyrich in the course of our employment with the Asolo. You accused us of misuse of funds, placing unauthorized signatures on payroll checks, misusing Asolo's equipment and leasing it to others without the Asolo's knowledge, taking unauthorized advertisements in IATSE Newsletters on behalf of the Asolo but without its consent, and other allegations. These matters were reported to us and later confirmed by Lee Warner in a conversation with our union attorney.

You are unquestionably aware that the allegations you made against Victor Meyrich and me are utterly false and without any factual foundation whatsoever. Your sole purpose in making the statements can only have been to injure our reputations, perhaps to cause us to be terminated, and to impair Local 412's relationship with its most substantial contracting employer. Fortunately, the recipients of your outrageous accusations recognized immediately the lack of any foundation for them. Nonetheless, by making such statements you have impaired our ability to provide additional employment opportunities for members of this local union and other applicants for referral by chilling our further use of Asolo equipment in other facilities, even though our use of such equipment in the past was entirely appropriate, and was with Asolo's full knowledge and consent, with the understanding that we would use qualified members to operate it.

We have discussed this matter with the Executive Board and our attorney. All are in agreement that your conduct goes beyond mere slander and disloyalty to the union: it is a wilful and malicious attack on me, Vic Meyrich, and Local 412 as a whole. Insofar as you have already damaged the Local, Vic Meyrich and me to some extent and may possibly have caused us further damage by repeating these outrageous, wilful, and false accusations to others, outside of any conceivably legitimate forum and without any conceivable exuse, we have instructed our attorney to initiate suit against you forthwith. In the meantime, notwithstanding the fact that you are presently suspended from use of the referral procedure based on your failure to agree to abide by the current referral conditions as set forth in my previous correspondence to you,[5] this most recent conduct of yours, standing alone, is sufficiently egregious to relieve Local 412 of any further obligation to allow your use of our referral procedures. Accordingly, your privilege of using the Local 412 referral hall is hereby permanently revoked.

Sincerely,
/s/ Martin Petlock
Martin Petlock

Von Mann testified he met with Asolo's executive director, Lee Warner, on May 22.[6] Von Mann said he requested the meeting because he had information causing him to suspect Union President Victor Meyrich[7] and Business Representative Petlock were renting Asolo equipment possibly without Asolo knowing about the rentals. Von Mann testified he presented Asolo's executive director, Warner, four documents. The documents were: (1) a page from the Sarasota, Florida telephone directory yellow pages, (2) a circular distributed by a sister union local (Local 477), (3) a copy of an invoice issued by the Union to the Brandenton, Florida Ballet School, and, (4) a business card for Roger Ragland.

Von Mann said he explained to Asolo's executive director, Warner, he was not accusing Union President Meyrich and Business Representative Petlock of any improprieties but he thought the information he was supplying and the circumstances surrounding the documents would prove interesting to Asolo. Von Mann explained that the Union's yellow pages advertisement puzzled him because the Union was a labor organization and he felt it should not be advertising itself as renting sound, lighting, props, and other types of equipment. Von Mann said he had no problem with the Union's advertising that it supplied personnel to operate such equipment but that his problem concerned the Union listing its telephone number for equipment rentals. Von Mann testified Union President Meyrich placed an advertisement for Asolo Scenic Studios (a division of Asolo) in a Union Local

[4] On September 8, counsel for the General Counsel filed a motion with the Board to remand the proceedings in *Asolo I* to the judge with directions that the judge reopen the record for receipt of evidence relative to the unfair labor practice allegations in the instant complaint. The Board, in *Asolo I*, denied counsel for the General Counsel's motion clearing the way for the trial herein.

[5] Details related to von Mann's suspension and Petlock's previous correspondence are addressed by the judge in *Asolo I*, 308 NLRB 1084 (1992).

[6] Assistant Executive Director Donna Gerdes was also present at the meeting.

[7] Meyrich is also the production manager for Asolo. Meyrich's position as president of the Local is being challenged by the U. S. Department of Labor in a Federal court action on the basis that Meyrich's position with Asolo is a management position. The basis for that court action stems from a complaint filed by Von Mann with the U. S. Department of Labor.

477[8] publication thus placing Asolo in the commercially competitive field and von Mann said it was his impression Asolo was a nonprofit corporation barred from the commercial arena. Von Mann explained to Asolo's executive director, Warner, that the invoice the Union issued to the Brandenton Ballet School was for supplying personnel for a performance but that at the bottom of the invoice was an addendum which was a bill for equipment rental that called for payment to be made to Business Representative Petlock. Von Mann said it looked as if Business Representative Petlock was renting equipment that was being billed through the Union which von Mann described as ''an impropriety.'' von Mann testified that although he possibly thought Petlock might be pocketing the money from the rentals to the ballet, he did not mention such to Asolo's executive director, Warner. Von Mann explained he provided Warner Ragland's business card so Warner might verify the accuracy of certain information Ragland had related to von Mann. Von Mann testified Ragland told him while he (Ragland) was employed by Asolo Scenic Studios at Universal Studios, Orlando, Florida location he received an Asolo check for wages that was signed by Union President Meyrich. Von Mann testified, ''I was of the impression that this was an impropriety.''[9]

Von Mann testified he supplied the documents and information to Asolo's executive director, Warner, and Warner's assistant, Gerdes, because he wanted to protect the interests of the Union. Von Mann said if there were improprieties, such could harm the Union inasmuch as Meyrich and Petlock were both officials of the Union. Von Mann testified the 45-minute meeting ended with Warner thanking him for coming and that Warner promised to look into the matters von Mann had raised.

It is undisputed that the Union filed a defamation suit against von Mann based on von Mann's Asolo meeting outlined above. It is likewise undisputed that the General Counsel of the Board sustained, on appeal, Region 12's refusal to issue a complaint on von Mann's charge (Case 12–CB–3623) that the Union's defamation suit against him was brought in retaliation for his having filed charges alleging the Union operated an unlawful hiring hall. In that regard, the General Counsel, in a letter dated January 15, 1993, advised von Mann in part that ''even assuming, without concluding, that the lawsuit otherwise might have been retaliation for your having approached the Employer [Asolo] to allege possible improprieties by Union officials, it was concluded that in the circumstances of this case, such action was not a violation of the National Labor Relations Act.''[10]

Asolo's executive director, Warner, corroborated von Mann's testimony regarding their May 22 meeting with two exceptions.[11] Warner testified that he and/or Assistant Executive Director Gerdes already were aware of everything von Mann brought to their attention at the May 22 meeting. Warner testified von Mann did not accuse Union President Meyrich or Business Representative Petlock of any improprieties. Warner testified that after von Mann made him aware of Business Representative Petlock's July 10 letter to von Mann, that he (Warner) wrote Petlock advising him von Mann ''*did not*'' speak of any financial improprieties, that von Mann spoke only of ''*potential* financial improprieties.'' [Emphasis in original.]

Executive Director Warner testified that the May 22 meeting with von Mann did not necessitate any investigation by Asolo based on the information von Mann supplied because Asolo was already aware of everything von Mann raised at the meeting. Warner stated no improprieties existed. Warner testified Asolo did not direct or request that Union President Meyrich or Business Representative Petlock change their business dealings with Asolo in any manner. Warner stated the contract between Asolo and the Union is still being administered in the same manner as before his meeting with von Mann on May 22.

Warner testified that if the Union referred von Mann to Asolo as an employee, they would, in good spirit, accept von Mann but that Asolo would not name request von Mann.

Business Representative Petlock testified he wrote his July 10 letter to von Mann after he learned von Mann had gone to Asolo ''and made all sorts of allegations about President Meyrich and [him]self.'' Petlock said he was simply ''outlining [his] dismay and unhappiness'' with von Mann's ''accusing [him] of criminal activities.'' Petlock acknowledged he notified von Mann the Union was permanently revoking his use of the Union's exclusive referral hall services.[12] Petlock said von Mann was permanently barred because:

> Mr. von Mann is a continuing source of problems. We mentioned, the last time we were in this courthouse, a series of problems that Mr. von Mann had created through the years.[13] Is it necessary to go into them all? I would be happy to if you want me to spend the time.
>
> There are continuing problems. This was in a way a final, just the final touch. He came into a building where he believed President Meyrich and myself were employed at the time and went to management and said terrible things about us, that we were crooks and thieves and we were dishonest. His information was so far off base, that he was not even aware I was no longer employed at the building.
>
> I don't know what purpose he thought he was serving, aside from just pure malice and spite. This is a small town, sir, and Mr. Warner, I'm sure, sees the

[8] According to von Mann, this particular local is involved with film and video productions whereas the Union herein is involved with stage productions.

[9] Von Mann acknowledged Union President Meyrich was, and continues to be, production manager for Asolo as well as Asolo Scenic Studios and that his duties involved overseeing the entire operation of Asolo Scenic Studios.

[10] Counsel for the General Counsel, at trial, stated the Government was not asserting that von Mann's actions leading to the Union's barring him from using its hiring hall was protected activity but rather that the Union's barring von Mann was unlawful regardless of the actions that lead the Union to take the action it did.

[11] Warner testified Asolo is not a state institution as believed by von Mann, and Warner said he did not mention to von Mann that it would be improper for Asolo to engage in competition with private enterprise. Warner stated Asolo engages in private enterprise and pays Federal taxes as a result thereof.

[12] Business Representative Petlock acknowledged he was the union official who administers and operates the Union's exclusive referral hall.

[13] For a discussion of the ''series of problems'' Business Representative Petlock references, see *Asolo I,* 308 NLRB 1084 (1992).

> other chief executive officers of our other employers: the opera house, the Van Wezel, at fund-raising events, at social events, at opening nights. I don't know that he would willingly say terrible things about us, but I'm sure that, you know, the question might come up in discussion. I think we're really open to a situation of, you know, what's going on. I'm sorry. I guess I'm not being terribly clear.
>
> Just of this kind smear on our reputations. The kind of business we're in is one where things happen very fast and your reputation and your word are very important. A lot of things don't get written in this situation. A lot is based on your personal integrity and that was attacked by Mr. von Mann.
>
> It was, I think, a spiteful and malicious move on his part because we had attempted to try to inject some discipline into the work place. We had, as we mentioned in the last trial, he did unlawful acts. He did secret tape recordings of people that were unaware and attempted to play them back and create charges against union officers. He offered me a marijuana cigarette at the Van Wezel during a work period, once. He damaged the Van Wezel physical appearance by cutting a hole in the decorative architectural screen without permission.
>
> There is a long list of problems that we've had with this gentleman. And when we attempted to at least make him understand that certain behavior would not be tolerated he, as was his right, went to the NLRB. And when he did not get instant satisfaction he, I believe, took an action by himself, which was to attack us. Totally criminal.
>
> I'm offended by it and he won't come to the meetings, he won't come speak as he's sworn to do in his oath to the union to deal with it internally.

Business Representative Petlock did state things were business as usual with Asolo after von Mann's visit with Asolo officials on May 22.

Union President Meyrich testified that as production manager for Asolo, he is the person that contacts the Union for referrals. Meyrich testified he could and has name requested individuals but that he would not request, nor would he accept, von Mann for employment with Asolo. Meyrich testified he would not request or use von Mann because ''many years'' ago he employed von Mann in a ''sound'' position but that von Mann quit the approximately 40-week job after only 2 weeks leaving him ''fairly high and dry'' trying to replace von Mann. In addition, Meyrich said he was aware of the things brought out in the *Asolo I* trial as well as other things and that all in all, he considered von Mann to be an ''unreliable,'' ''conspiratorial theorist,'' with a ''plot and a plan'' that created problems backstage for the other crew hands. Meyrich said he does not think von Mann is qualified to perform work referred from the union hall because of his unreliability. Meyrich said von Mann does not conduct himself in a professional manner and exhibits an ''uncaring attitude toward the equipment of the producer.'' Meyrich added von Mann ''knocked over things'' on the sets. Meyrich said von Mann's visit with his (Meyrich's) employer (Asolo) on May 22, ''angered'' him and he thereafter had ''animosity for Brother von Mann.''

It is undisputed von Mann has received no referrals from the Union since July 10.

IV. POSITIONS OF THE PARTIES

Counsel for the General Counsel contends the Union unlawfully disciplined von Mann for arbitrary and invidious reasons by using the most powerful tool at its disposal—the denial of employment to him. Counsel for the General Counsel asserts von Mann made no accusations against either Union President Meyrich or Business Representative Petlock. In support thereof, counsel for the General Counsel points to Asolo Executive Director Warner's testimony that von Mann made no accusations and also to the fact Warner advised the Union that von Mann had not made any accusations against Meyrich, Petlock, or the Union. Counsel for the General Counsel asserts the Union may not legally bar von Mann from using its hiring hall based on actions or accusations of actions on von Mann's part that never took place. Counsel for the General Counsel also asserts the Union has not been harmed in any manner by von Mann's actions. In support thereof, counsel for the General Counsel points out that Warner and Petlock both testified that the relationship between the Union and Asolo has not changed in any way since von Mann visited with Asolo's executives. In summary, counsel for General Counsel contends the Union violated the Act when it permanently barred von Mann from utilizing its exclusive hiring hall system because he visited with Asolo's officials on May 22.

The Union asserts that von Mann, at his meeting with Asolo officials on May 22, made statements that were false, malicious, and defamatory to Union President Meyrich and Business Representative Petlock. The Union asserts von Mann's comments were the product of ''pure malice'' and ''spite'' and an attempt to place activities by Union President Meyrich and Business Representative Petlock in a false light making it appear they were doing something illegal, or were dishonest or unethical. The Union argues that as a result of von Mann's unsubstantiated and unprotected statements to Asolo officials it was legally privileged to permanently bar von Mann from using its exclusive referral system. The Union contends von Mann's statements had the potential to impair the Union's reputation and to hinder its ability to secure business with other area venues. Thus, the Union argues its action of barring von Mann from its referral system was based on legitimate business considerations and absent proof of a statutorily prescribed objective is immune from Board scrutiny. The Union argues there is no evidence on which it could be concluded that the Union acted in bad faith or that its action was baseless. In summary the Union argues that the evidence amply supports the inference that von Mann's statements were made either maliciously, or at the very least, recklessly and that his purpose was to impugn the reputation of Meyrich and Petlock and through them the Union. The Union asserts its concern about the possible effects of von Mann's statements gave it ample reason to believe its legitimate business interests stood to be impaired and thus its actions against von Mann did not violate the Act.

V. ANALYSIS

It is not disputed that the Union has exclusive hiring hall arrangements with Asolo and other various employers in and around Sarasota, Florida.

It is well established that as the operator of an exclusive hiring hall, a union owes a duty of fair representation to applicants using that hall. As a part of its duty of fair representation, a union has an obligation to operate the exclusive hiring hall in a manner that is not ''arbitrary or unfair.'' See, e.g., *Radio-Electronics Officers Union*, 306 NLRB 43 (1992). Where a union causes, attempts to cause, or prevents an employee from being hired or otherwise impairs the job status of an employee, it demonstrates its power and influence over the employee's livelihood so dramatically as to compel an inference that the effect of the union's actions is to encourage union membership on the part of all employees who have perceived the display of power. A union may overcome this inference or rebut this presumption, by proving that the action was necessary to the effective performance of its function of representing its constituency.[14] See, e.g., *Teamsters Local 456 (Louis Petrillo Corp.)*, 301 NLRB 18 at 22 (1991).

The evidence clearly establishes that the Union herein permanently barred von Mann from its exclusive hiring hall system because he visited with two Asolo executives on May 22. Was the Union's action necessary to the effective performance of its function in representing employees? That question must be answered in the negative. First, it is clear from the credited testimony of von Mann and Asolo Executive Director Warner that von Mann did not accuse Union President Meyrich or Business Representative Petlock of any improprieties as claimed by Petlock in his July 10 letter to von Mann. After Asolo Executive Director Warner learned of Petlock's July 10 letter to von Mann he wrote Petlock telling Petlock von Mann had not spoken of any financial improprieties and also noted that he (Warner) had not reported such to anyone in the Union. Second, von Mann did not report or provide anything to Asolo's executives that they were not already aware of. Stated differently von Mann did not reveal anything new to Asolo's executives when he met with them. Third, business has continued as usual between the Union and Asolo since von Mann met with the Asolo officials on May 22. There also is no showing that the Union's relationship with any other employer has changed following von Mann's visit at Asolo.

In light of all the above, I conclude the Union has failed to meet its burden of establishing adequate justification for permanently barring von Mann from using its exclusive hiring hall system. The Union's action violates Section 8(b)(1)(A) and (2) of the Act and I so find.

CONCLUSIONS OF LAW

1. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, I.A.T.S.E. & M.P.M.O., Local 412 is a labor organization within the meaning of Section 2(5) of the Act.

2. Asolo Center for the Performing Arts is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. On or about October 1, 1988, Asolo and other various employers and the Union entered into, and has since that date maintained, a practice and/or arrangement requiring the Union to be the sole and exclusive source of referrals of employees to employment with Asolo and other various employers.

4. By permanently barring Karl Franz von Mann, since on or about July 10, 1992, from using its referral system, the Union has been, and is, engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

THE REMEDY

Having found that the Union has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that the Union be ordered to revoke and give no effect to its July 10, 1992 letter permanently barring von Mann from using its referral system. It is further recommended that the Union shall refer von Mann for employment utilizing objective criteria and standards. It is further recommended that the Union shall make Karl Franz von Mann whole for any loss of earnings and benefits sustained by him as a result of the Union's failure and refusal to refer him for employment. See *F. W. Woolworth Co.*, 90 NLRB 289 (1950). Backpay and benefits shall be with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[15]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[16]

ORDER

The Respondent, International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, I.A.T.S.E & M.P.M.O., Local 412, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Barring Karl Franz von Mann from using its referral system.

(b) Failing and refusing to refer employees for employment for unfair and/or arbitrary reasons.

(c) In any like or related manner interfering with, restraining, or coercing members/employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Refer Karl Franz von Mann for employment based on objective criteria and standards.

(b) Make Karl Franz von Mann whole for any loss of earnings and other benefits he may have suffered as a result

[14] A union may also show it was acting pursuant to a valid union-security clause; however, such is not an issue herein.

[15] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 6621.

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

of its failure and refusal to refer him, with interest, as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Revoke and remove from its records any reference to its July 10, 1992 written communication permanently barring von Mann from the use of its referral system.

(e) Post at its office, hiring hall, or other facilities copies of the attached notice marked ''Appendix.''[17] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Union's authorized representative, shall be posted by the Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Mail a copy of said notice to Karl Franz von Mann.

(g) Forward to the Regional Director for Region 12 signed copies of the notice, sufficient in number, for Asolo and other various employers, if willing, to post at their Sarasota, Florida facilities.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Union has taken to comply.

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT permanently bar Karl Franz von Mann or anyone similarly situated from using our exclusive referral system for referrals to employment with the Asolo Center for the Performing Arts and other various employers in the Sarasota, Florida area.

WE WILL NOT fail or refuse to refer employees for employment based on unfair and/or arbitrary reasons.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Karl Franz von Mann whole for any loss of earnings he may have suffered as a result of our barring him from using our exclusive referral system and/or our failure and/or refusal to refer him for employment based on unfair and/or arbitrary reasons.

WE WILL remove from our records all references to our unlawfully barring Karl Franz von Mann from using our exclusive referral system and WE WILL notify him in writing that we have done so.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, I.A.T.S.E. & M.P.M.O., LOCAL 412